

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-006

July 19, 2000

APPEAL OF CONSUMER
ASSISTANCE DIVISION DECISION
#1999-6564 REGARDING BELL
ATLANTIC – MAINE

ORDER

WELCH, Chairman; NUGENT, and DIAMOND Commissioners

I. Summary

In this Order, we uphold the decision of the Consumer Assistance Division (CAD) with regard to ISDN services provided by Bell Atlantic-Maine (Bell Atlantic or BA) to customer Mr. Lou McIntosh/Merrywing Corporation (Mr. McIntosh). However, we direct Bell Atlantic to ensure that customers ordering services by telephone are fully informed of any additional charges and to maintain sufficient records to indicate that the customers have agreed to the charges.

II. Background

Mr. McIntosh complained to CAD on April 27, 1999 about BA's failure to provide a firm delivery date for ISDN service he had ordered by phone on or about March 22, 1999. Mr. McIntosh's service was eventually installed and operating by May 12, 1999. On June 7, 1999, Mr. McIntosh complained again to CAD. He objected to Bell Atlantic charging him a one-time construction charge of \$175.00 and a recurring charge of \$30 per month, in addition to the monthly \$65 ISDN rate originally advertised. After Mr. McIntosh complained, BA offered a goodwill adjustment of \$250.64 in recognition of the delay and to eliminate the one-time assembly charge while maintaining the additional \$30 per month charge, or to remove the service altogether. Mr. McIntosh turned down this offer.

CAD found that Bell Atlantic had followed proper procedures when it investigated and responded to Mr. McIntosh's complaints about his service. Bell Atlantic records indicated that after Mr. McIntosh ordered ISDN, his request went to BA's engineers for design. They discovered that the existing facilities (fiber optic cable at the central office) were not compatible with ISDN. The upgrade required special construction, for which BA is permitted to charge under its tariffs.

On December 23, 1999, Mr. McIntosh appealed CAD's decision to the Commission. Mr. McIntosh states that the core of his complaint is that Bell Atlantic

advertised a service at a particular rate, assured him that the service was available, and once he signed up for it, increased the price. He also claims his service had been through copper not fiber optic cable, implying that there was nothing to be changed.

III. DECISION

Bell Atlantic's records show that Mr. McIntosh ordered ISDN service through a telephone representative on March 27, 1999. On April 7, 1999, BA confirmed the order, and its records note that the customer needed installation by April 13, when his T-1 connection was scheduled to terminate. On April 26, BA informed the customer that additional engineering work was needed to provide ISDN at his location, so the installation would take until May 6. Mr. McIntosh did not receive service until May 12, 1999. The records regarding customer contacts are not clear. However, it appears that BA could have better informed the customer of the status of his order. Most of BA's contacts appear to have been in response to his inquiries.

BA's records do not show that its engineering personnel told the customer that additional charges would be required. According to BA, confirmation of additional charges can be verbal or written. To minimize further controversies, BA should at least contemporaneously record the fact that the customer has been informed about additional charges and has agreed to those charges.

Bell Atlantic's tariffs permit the special assembly charge of \$30 per month and the one-time engineering charge of \$175.00. However, Mr. McIntosh's complaint is that he was informed that ISDN was \$65 per month when he placed his order, but the additional charges only came to light after the service was installed. Mr. McIntosh also claims he was never served by fiber, and therefore no change to copper was required. We have no reason to believe that BA's work was unnecessary; the changes took place in the central office, not at Mr. McIntosh's location. Therefore he would not be aware of the type of facilities needed to provide the service.

In this case, Bell claims that Mr. McIntosh was informed of the additional charges and agreed to go ahead with the service. However, nothing in Bell's records confirms his assent to the charges. In the future, BA should maintain such records. Nevertheless, we find the charges are consistent with the Company's tariffs. BA's offer to drop the one-time construction charge, but to continue the \$30 additional monthly charge, or to remove the installation, was a reasonable response to Mr. McIntosh's complaint. We will not require BA to provide the service at less than the rate provided in its tariffs.

Therefore, we uphold CAD's decision. In the future, however, we will require BA to demonstrate with, at a minimum, contemporaneous records that it informed the customer of the charges for services ordered over the telephone and that the customer agreed to the charges.

Dated at Augusta, Maine, this 19th day of July, 2000.

BY ORDER OF THE COMMISSION

Raymond Robichaud
Acting Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.